# ARTICLE VI. JUDICIAL CONDUCT

# Rule 1. Code of judicial conduct

## **PREAMBLE**

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

#### **TERMINOLOGY**

Terms explained below are noted with an asterisk (\*) in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.

"Appropriate authority" denotes the Commission on Judicial Tenure and Discipline or the Presiding Justice or Chief Judge of the court on which the particular judge serves or in which the activity occurred. See Sections 3D(1) and 3D(2).

"Candidate." A candidate is a person seeking selection for judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation of support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Sections 5A. 5B.

"Continuing part-time judge." A continuing part-time judge is a judge who serves repeatedly on a part-time basis under a continuing appointment, including a retired judge subject to recall. See Application Section C.

"Court personnel" does not include the lawyers in a proceeding before a judge. See Sections 3B(8)(c) and 3B(10).

"De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Sections 3E(1)(c) and 3E(1)(d).

"Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

- (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;
- (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the

securities. See Section 3E(1) and 3E(2).

"Ex Parte" is a term that refers to any communication, action, judicial proceeding, order, temporary restraining order or injunction when it occurs or is taken or granted at the instance of and for the benefit of one party only and without notice to, or contestation or participation by any person, with standing who is adversely affected. The phrase contemplates one side only, by or for one party, done for, in behalf of, or on the application of one party only.

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian. See Sections 3E(2) and 4E.

"Judge or Judicial Officer". See Section A of application section.

"Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D, 3E(1), and 5A(3).

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(8), 4B, 4C, 4F, 5A(2), 5A(3), 5B(2), and 5C.

"Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. See Section 5A(3)(a).

"Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Sections 4D(2), 4E and 4G.

"Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Sections 3E(1) and 4D(4).

"Nonpublic information" denotes information that, by law, is not available to the public. Non-public information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports. See Section 3B(12).

"Periodic part-time judge." A periodic part-time judge is a judge who serves or expects to serve repeatedly on a part-time basis but under a separate appointment for each limited period of service or for each matter. See Application Section D. This does not apply to persons serving as arbitrators.

"Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Sections 5A(1), 5B(2) and 5A(2).

"Pro tempore part-time judge." A pro tempore part-time judge is a judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard. See Application Section E.

"Public election." This term includes primary and general elections; it includes partisan elec-Current as of July 20, 2015 tions and nonpartisan elections. See Section 5A(2).

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3B(3), 3B(4), 3B(7), 3B(10) and 3C(2).

"Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1)(d).

# Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. This Code, designed to further that purpose, is intended to apply to every aspect of judicial behavior except purely legal decisions. Legal decisions made in the course of judicial duty are subject solely to judicial review. The provisions of this Code are to be construed and applied to further that objective.

#### **COMMENTARY**

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

The role of the judicial conduct organization like the Commission on Judicial Tenure and Discipline R.I.G.L., § 8-16-1 et seq., is not that of an appellate court. The commission shall not function as an appellate court to review the decisions of a court or judge or to exercise superintending or administrative control over determinations of courts or judges.

# Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law\* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

## **COMMENTARY**

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to Current as of July 20, 2015 both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

Restrictions on the personal conduct of judges cannot, however, be so onerous as to deprive them of all fundamental freedoms enjoyed by other citizens. Care must be taken to achieve a balance between the need to maintain the integrity and dignity of the judiciary and the right of judges to conduct their personal lives in accordance with the dictates of their individual consciences.

In striking this balance the following factors should be considered:

- (a) the degree to which the personal conduct is public or private;
- (b) the degree to which the personal conduct is a protected individual right;
- (c) the potential for the personal conduct to directly harm or offend others;
- (d) the degree to which the personal conduct is indicative of bias or prejudice on the part of the judge;
- (e) the degree to which the personal conduct is indicative of the judge's lack of respect for the public or the judicial/legal system.

See also Commentary under Section 2C.

- \* See Terminology, "law."
- B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness in a judicial proceeding. A judge may, however participate in a confirmation hearing by appearing at the request of a candidate, making a statement as to the candidate's qualifications and responding to questions asked by the panel members or by writing a letter to the appointing or confirmation authority containing the information that would have been given in a personal appearance at the proceeding.

## **COMMENTARY**

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions.

Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to use one's judgeship to gain a

personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. The use of one's judicial letterhead for conducting a judge's personal business having nothing to do with the judge's official business or office is discouraged.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(4)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation.

A judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may serve as a reference and may provide written or oral recommendations on behalf of an individual with respect to matters within the judge's personal knowledge and observations.

Where such reference or recommendation is solicited or sought for consideration in connection with proceedings such as parole or classification, sentencing or probation conditions, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 5 regarding use of a judge's name in political activities.

A judge should not testify voluntarily as a character witness in a judicial proceeding because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, disability or national origin.

## **COMMENTARY**

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the or-

ganization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, disability, sex, handicap, or national origin persons who would otherwise be admitted to membership. See *New York State Club Ass'n Inc. v. City of New York*, 487 U.S. 1, 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984).

Although Section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion, disability or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion, disability or national origin in its admission to membership or other public policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.

When a person who is a judge on the date this Code became effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

# Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

**A. Judicial Duties in General.** The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law.\* In the performance of these duties, the following standards apply.

# B. Adjudicative Responsibilities.

- 1. A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.
- 2. A judge shall be faithful to the law\* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.
  - 3. A judge shall require\* order and decorum in proceedings before the judge.
  - 4. A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and Current as of July 20, 2015

<sup>\*</sup> See Terminology, "law."

others with whom the judge deals in an official capacity, and shall require\* similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control. During trials and hearings, a judge should act so that the judge's attitude, manner or tone toward counsel or witnesses will not prevent the proper presentation of the cause or the ascertainment of the truth. A judge may properly intervene if the judge considers it necessary to clarify a point or expedite the proceedings.

- 5. (i) A judge may properly intervene in a trial of a case to promote expedition but a judge should bear in mind that his or her undue or unreasonable interference may tend to prevent the proper presentation of a case or the ascertainment of the truth. Any interruption of the case generally should serve to clarify or emphasize the issue or issues involved.
- (ii) A judge should be studious to avoid controversies which are apt to obscure the merit of the dispute between litigants.
  - (iii) A judge should avoid unnecessary displays of learning or a premature judgment.
- \* See Terminology, "law."
- \* See Terminology, "require."

## **COMMENTARY**

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

6. A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

#### COMMENTARY

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

7. A judge shall require\* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(7) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

- 8. A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.\* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:
- (a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:
- (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
- (ii) the judge makes provision promptly to notify all other parties of the substance of the exparte communication and allows an opportunity to respond.
- (b) A judge may obtain the advice of a disinterested expert on the law\* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.
- (c) A judge may consult with court personnel\* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.
- (d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
- (e) A judge may initiate or consider any ex parte communications when expressly authorized by law\* to do so.
- (f) A judge should not permit private interviews, arguments or communications designed to influence his or her judicial action, and ordinarily all communications of counsel to the judge should be made known to opposing counsel.
- (g) A judge should discourage ex parte applications for injunctions and receiverships where the order may work detriment to absent parties. A judge should act upon ex parte applications only where the necessity for quick action is clearly shown. A judge should scrupulously cross examine and investigate the facts and the principles of law upon which the application is based, granting relief only when fully satisfied that the law permits it and the emergency demands it. A judge should remember that an injunction is a limitation upon freedom of action of defendants and should not be granted lightly or inadvisedly.
- \* See Terminology, "require."
- \* See Terminology, "law."
- \* See Terminology, "court personnel."

## **COMMENTARY**

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communi-Current as of July 20, 2015 cations with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(8), it is the party's lawyer, or if the party is unrepresented, the party who is to be present or to whom notice is to be given.

Any appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Section 3B(8) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(8) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(8)(a) and 3B(8)(b) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

Under this subsection, a judge should not accept any trial briefs that are not exchanged with adversary parties unless all parties agree otherwise in advance of submission of the briefs.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(8) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

9. A judge shall dispose of all judicial matters promptly, efficiently and fairly.

#### COMMENTARY

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

10. A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness. The

judge shall require\* similar abstention on the part of court personnel\* subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

- \* See Terminology, "require."
- \* See Terminology, "court personnel."

#### COMMENTARY

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Rhode Island Rules of Professional Conduct. Judges are reminded of Supreme Court Provisional Order No. 15 as amended and found in Article VII of the Supreme Court Rules regarding media coverage of court proceedings.

11. A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

## **COMMENTARY**

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case, and also because the judge may be called upon to rule in further proceedings on that case.

- 12. A judge may discuss a case that has exhausted its appellate remedies provided, however, that a judge shall never disclose or use nonpublic information\* acquired in a judicial capacity for any purpose unrelated to judicial duties.
- \* See Terminology, "nonpublic information."
- 13. A judge shall cooperate with other judges as members of a common judicial system to promote the satisfactory administration of justice.

# C. Administrative Responsibilities.

- 1. A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.
- 2. A judge shall require\* staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.
- 3. A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

- 4. A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.
- \* See Terminology, "require."

#### COMMENTARY

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or to the award of compensation for any appointee does not relieve the judge of the obligation prescribed by Section 3C(4). The judge is encouraged to discuss with the attorneys the time spent, the complexity of the work done and the hourly rate to the charged.

# D. Disciplinary Responsibilities.

- 1. (a) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action.
- (b) A judge having knowledge\* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.\*
- 2. (a) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action.
- (b) A judge having knowledge\* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority,\* the office of Disciplinary Counsel.
- 3. Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.
- \* See Terminology, "knowingly," "knowledge," "known" and "knows."
- \* See Terminology, "appropriate authority."

## **COMMENTARY**

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body. It is understood that the "appropriate action" will vary with the circumstances of each case. However, inaction in a situation where the judge has information which would support more than a reasonable suspicion of wrong doing is unacceptable conduct on the part of that judge.

# E. Disqualification.

1. A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

#### COMMENTARY

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge was in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

- (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge\* of disputed evidentiary facts concerning the proceeding;
- (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;
- \* See Terminology, "knowingly," "knowledge," "known" and "knows."

#### COMMENTARY

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

- (c) the judge knows\* that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household,\* has an economic interest\* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis\* interest that could be substantially affected by the proceeding:
- (d) the judge or the judge's spouse, or a person within the third degree of relationship\* to either of them, or the spouse of such a person:
  - (i) is a party to the proceeding, or an officer, director or trustee of a party;

- (ii) is acting as a lawyer in the proceeding;
- (iii) is known\* by the judge to have a more than de minimis\* interest that could be substantially affected by the proceeding;
  - (iv) is to the judge's knowledge\* likely to be a material witness in the proceeding.
- \* See Terminology, "knowingly," "knowledge," "known" and "knows."
- \* See Terminology, "economic interest."
- \* See Terminology, "de minimis."
- \* See Terminology, "third degree of relationship."

## **COMMENTARY**

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

- 2. A judge shall keep informed about the judge's personal and fiduciary\* economic interests,\* and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.
- \* See Terminology, "fiduciary."
- \* See Terminology, "economic interest."

# F. Remittal of Disqualification.

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

## **COMMENTARY**

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

# Canon 4. A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict With Judicial Obligations

- **A. Extra-Judicial Activities in General.** A judge shall conduct all of the judge's extra-judicial activities so that they do not:
  - 1. cast reasonable doubt on the judge's capacity to act impartially as a judge;
  - 2. demean the judicial office; or
  - 3. interfere with the proper performance of judicial duties.

#### COMMENTARY

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2C and accompanying Commentary.

**B. Avocational Activities.** A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law,\* the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

## **COMMENTARY**

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

# C. Governmental, Civic or Charitable Activities.

1. A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,\* the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's

<sup>\*</sup> See Terminology, "law."

interests.

\* See Terminology, "law."

## **COMMENTARY**

See Canon 2B regarding the obligation to avoid improper influence and Commentary on 2B regarding confirmation hearings.

- 2. A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,\* the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.
- \* See Terminology, "law."

#### COMMENTARY

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

- 3. A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law,\* the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.
- \* See Terminology, "law."

## **COMMENTARY**

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited

from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

- (a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization
  - (i) will be engaged in proceedings that would ordinarily come before the judge, or
- (ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

#### COMMENTARY

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

- (b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:
- (i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;
- (ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,\* the legal system or the administration of justice;
- (iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;
- (iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.
- \* See Terminology, "law."

#### COMMENTARY

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism.

Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases:

1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Canon 4 should not be read as proscribing participation in de minimis \* fund-raising activities so long as a judge is careful to avoid using the prestige of the office in the activity. Thus, e.g., a judge may pass the collection basket during services at church, may ask friends and neighbors to buy tickets to a pancake breakfast for a local neighborhood center and may cook the pancakes at the event, but may not personally ask attorneys and others who are likely to appear before the judge to buy tickets to it. Similarly, Canon 4 should not be read to prohibit judges from soliciting memberships for religious purposes, but judges must nevertheless avoid using the prestige of the office for the purpose of such solicitation.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

### D. Financial Activities.

- 1. A judge shall not engage in financial and business dealings that:
- (a) may reasonably be perceived to exploit the judge's judicial position, or
- (b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the judge which would necessitate the judge's recusal.

## **COMMENTARY**

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that are not available to the public, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come before the judge personally. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of that judge with law firms

appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Canon 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Canon 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Canon 4B regarding use of the phrase "subject to the requirements of this Code."

- 2. A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family,\* including real estate, and engage in other remunerative activity.
- \* See Terminology, "member[s] of the judge's family."

#### COMMENTARY

This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

- 3. A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.
- 4. A judge shall not accept, and shall urge members of the judge's family residing in the judge's household,\* not to accept, a gift, bequest, favor or loan from anyone except for:
- \* See Terminology, "law."
- \* See Terminology, "member of the judge's family residing in the judge's household."

## **COMMENTARY**

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,\* the legal system or the administration of justice;

<sup>\*</sup> See Terminology, "law."

## **COMMENTARY**

Acceptance of an invitation to a law-related function is governed by Canon 4D(4)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Canon 4D(4)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Canons 4A(1) and 2B.

- (b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;
- (c) ordinary social hospitality;
- (d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

#### COMMENTARY

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(4)(e).

- (e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;
- (f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;
- (g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or
- (h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds \$150.00, the judge reports it in the same manner as the judge reports compensation in Section 4H.

## **COMMENTARY**

Section 4D(4)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

# E. Fiduciary Activities.

- (1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary,\* except for the estate, trust or person of a member of the judge's family,\* and then only if such service will not interfere with the proper performance of judicial duties.
- (2) A judge shall not serve as a fiduciary\* if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
- (3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary\* capacity.
- \* See Terminology, "fiduciary."
- \* See Terminology, "member of the judge's family."

#### COMMENTARY

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

- **F. Service as Arbitrator or Mediator.** A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.\*
- \* See Terminology, "law."

#### COMMENTARY

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

**G. Practice of Law.** A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.\*

A judge having a financial interest in a law practice when appointed to the bench shall within ninety days after appointment or adoption of this canon, make a full written disclosure thereof to the Chief Justice of the Supreme Court and to the Presiding Justice or Chief Judge of the court on which that judge serves.

\* See Terminology, "member of the judge's family."

# **COMMENTARY**

This prohibition refers to the practice of law in a representative capacity and not in a pro se

Current as of July 20, 2015

capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige or office to advance the interests of the judge or the judge's family. See Section 2(B).

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

The restraint against a judge giving advice to parties in matters before the judge does not prohibit a judge from advising such parties to obtain lawyers or medical treatment and from advising such parties on similar matters unrelated to the merits of the matter before the judge.

# H. Compensation, Reimbursement and Reporting.

- (1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the non-judicial activities or services permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.
- (a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same services.
- (b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.
- (2) *Public Reports*. A judge shall report the source and nature of all compensation received for any non-judicial service and the identity of the payor. The judge's report shall be made annually on or before the last day of April and shall be filed as a public document in the office of the Chief Justice.

#### COMMENTARY

See Section 4D(4) regarding reporting of gifts, beguests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

**I.** Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.\*

<sup>\*</sup> See Terminology, "law."

## **COMMENTARY**

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Terminology Section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties; Section 4H requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

# Canon 5. A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity

# A. All Judges and Candidates.

- (1) Except as authorized in Canons 5B(2) a judge or a candidate\* for election or appointment to judicial office shall not:
  - (a) act as a leader or hold an office in a political organization\*;
  - (b) publicly endorse or publicly oppose another candidate for public office;
  - (c) make speeches on behalf of a political organization;
  - (d) attend political gatherings; or
- (e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.
- \* See Terminology, "candidate."
- \* See Terminology, "political organization."

#### COMMENTARY

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Canon 5A(1) from making the facts public.

Canon 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as a prosecutor, which is not "an office in a political organization."

Canon 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

A judicial candidate does not publicly endorse another candidate for public office.

(2) A judge shall resign from judicial office upon becoming a candidate\* for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial

office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law\* to do so.

- (3) A candidate\* for a judicial office:
- (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family\* to adhere to the same standards of political conduct in support of the candidate as apply to the candidate:
- \* See Terminology, "law."
- \* See Terminology, "candidate."
- \* See Terminology, "members of the candidate's family."

## **COMMENTARY**

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

- (b) shall prohibit employees and officials who serve at the pleasure of the candidate,\* and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon:
- (c) shall not authorize or knowingly\* permit any other person to do for the candidate\* what the candidate is prohibited from doing under the Sections of this Canon;
  - (d) shall not:
- (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;
- (ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or
- (iii) knowingly\* misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;
- \* See Terminology, "candidate."
- \* See Terminology, "knowingly."

## **COMMENTARY**

Canon 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Canon 3B(9), the general rule on public comment by judges. Canon 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Canon prohibit an incumbent judge from making private statements to other judges or court personnel in the per-

formance of judicial duties. This Canon applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the ABA Model Rules of Professional Conduct.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 5A(3)(d).

# B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

- (1) A candidate\* for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.
- (2) A candidate\* for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:
  - (a) such persons may:
- (i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;
- (ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Canon 5B(2)(a); and
- (iii) provide to those specified in Canons 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;
- (b) a non-judge candidate\* for appointment to judicial office may, in addition, unless otherwise prohibited by law:\*
  - (i) retain an office in a political organization,\*
  - (ii) attend political gatherings, and
- (iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.
- \* See Terminology, "candidate."
- \* See Terminology, "law."
- \* See Terminology, "political organization."

## **COMMENTARY**

Canon 5B(2) provides a limited exception to the restrictions imposed by Canons 5A(1), 5B(1) and 5C. Under Canon 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Canons 5B(1), 5B(2)(a), 5C and Application Section.

- C. Incumbent Judges. A judge shall not engage in any political activity except
  - (i) as authorized under any Section of this Code,
- (ii) on behalf of measures to improve the law, the legal system or the administration of justice or
  - (iii) as expressly authorized by law.

## **COMMENTARY**

Neither 5C nor any other section of this code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its commentary.

#### APPLICATION OF THE CODE OF JUDICIAL CONDUCT

**A.** Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code including but not limited to justices and judges of the Supreme Court, Superior Court, Family Court, District Court and the Workers' Compensation Court, and the Masters who serve in those courts, judges in the Administrative Adjudication Court as well as all judges of Probate, Municipal and Housing Courts of the Cities and Towns.

All judges shall comply with this Code except as provided below.

# **COMMENTARY**

The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. For the purposes of this Section, as long as a retired judge is subject to recall the judge is considered to "perform judicial functions." The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.

The Code of Judicial Conduct is adopted by the Supreme Court of Rhode Island in the exercise of its inherent power to supervise all inferior judicial tribunals. This inherent power has been recognized by the General Assembly in G.L. 1956 (1985 Reenactment) § 8-1-2.

This Code shall be applicable to all members of judicial tribunals whether state or municipal, full-time or part-time, as described in paragraph A of the Application provision of the Code.

However, it is recognized that judges of probate are elected by city or town councils who may select probate judges in part based upon their prior partisan political activities. In some instances a probate court may consist of members of a town council or similar legislative body who are

elected to office on a partisan ballot. Those portions of the Code which discourage or prohibit political activities by judges should not be applicable in circumstances when political activity is inextricably related to the election or appointment of the probate judicial officer. However, those sections of the Code which relate to judicial decision making, impartiality and other factors relevant to all judicial officers and proceedings should guide the activities of judges of probate and members of municipal legislative bodies when serving as members of courts of probate.

- **B. Retired Judge Subject to Recall.** A retired judge subject to recall who by law is not permitted to practice law is not required to comply:
  - (1) with Canon 4F except while serving as a judge:
  - (2) Canon 4E at any time with Fiduciary activities.

# C. Continuing Part-Time Judge. A continuing part-time judge\*:

- (1) is not required to comply;
- (a) except while serving as a judge; and
- (b) or at any time with Canons 4C(2), 4E(1), 4F, 4G, 4H, 5A(1), 5B(2).
- (2) shall not practice law in the court on which the judge serves or in any tribunal subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.
- \* See Terminology, "continuing part-time judge."

# D. Periodic Part-Time Judge. A periodic part-time judge\*:

- (1) is not required to comply with Canon 3B(10);
- (a) except while serving as a judge,
- (b) or at any time, with Canons 4C(2), 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4E, 4F, 4G, 4H, 5A(1), 5B(2) and 5C.
- \* See Terminology, "periodic part-time judge."
- (2) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

# E. Pro Tempore Part-Time Judge. A pro tempore part-time judge:\*

- (1)(a) is not required to comply with Canons 2A, 2B, 3B(9) and 4C(1) except while serving as a judge.
- (b) at any time with Sections 2C, 4C(2), 4C(3)(a), 4C(3)(b), 4D(1)(b), 4D(3), 4D(4), 4E, 4F, 4G, 4H, 5A(1), 5A(2), 5B(2) and 5C.

- (2) A person who has been a pro tempore part-time judge\* shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Rhode Island Rules of Professional Conduct.
- \* See Terminology, "pro tempore part-time judge."
- **F. Time for Compliance.** A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Canons 4D(2), 4D(3) and 4E and shall comply with these Canons as soon as reasonably possible and shall do so in any event within the period of one year.

# **COMMENTARY**

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Canon 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, other than the practice of law, a new judge may, notwithstanding the prohibitions in Canon 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

#### ADVISORY COMMITTEE ON THE CODE OF JUDICIAL CONDUCT

In order to assist judges in complying with the foregoing canons, an advisory committee has been appointed by the Supreme Court with authority to interpret the canons and to provide an opinion upon the request of any judge concerning a proposed action and its propriety in the light of said canons. The advisory committee consists of five (5) members of the judiciary, not more than two of whom may be from the same court. The advisory committee will give the inquiring judge an opinion in respect to the propriety or impropriety of the judge's proposed action. An opinion from the advisory committee that it is proper for the judge to take certain action will give rise to a conclusive presumption that the judge has acted properly. Any judge who acts in accordance with an opinion given by the advisory committee shall be presumed to have abided by the Canons of The Code of Judicial Conduct.

# Rule 2. Claims Against Members of the Judiciary

Any person having a claim of a civil nature against a member of the judiciary may apply to the Supreme Court for the appointment of an attorney to represent such person at his or her own expense, and it shall be the duty of any attorney so appointed, as an officer of this court, to prosecute such claim.

# Rule 3. Mandatory Continuing Judicial Education

**Preamble.** It is of primary importance to the courts, the bar, and the public that the members of the state judiciary continue their judicial and legal education in order to fulfill their obligation to serve the citizens of this state with competence. This rule is adopted to establish mandatory minimum requirements as a means of standardizing continued professional growth.

# Rule 3.1. Continuing Judicial Education Commission.

- (a) This Court shall appoint a Continuing Judicial Education Commission, consisting of at least one judge from each of the courts in the unified judicial system. A Supreme Court justice on the commission shall be appointed by this Court as chair. One administrative officer shall be designated by the chief or presiding judge/justice of each court to serve ex-officio on the commission. The State Court Administrator and Deputy Court Administrator shall also serve ex-officio.
- (b) The commission shall have the authority to oversee and set standards for compliance with the mandatory judicial education requirements set forth below. The commission shall sponsor in-state education programs to assist judges in meeting those requirements and shall be responsible for the academic planning and setting of classroom standards for those programs. The commission shall submit an annual report to the Chief Justice regarding compliance with the requirements of this rule, which shall tally the attendance of state judges at in-state and out-of-state judicial education programs.

# Rule 3.2. Mandatory Continuing Judicial Education Requirements

- (a) Minimum Hours. Every judge in the unified judicial system shall be required to complete ten (10) hours of judicial education per year. Newly-appointed judges shall be required to attend the National Judicial College course appropriate to their appointment within their first year on the bench; hours spent in such attendance shall be counted toward their ten (10) hour requirement for that year. Judges now serving who have not attended the National Judicial College course appropriate to their appointment shall be required to attend as funding is available.
- (b) *Ethics*. The on-going study of judicial ethics shall be required of all judges. The Judicial Education Commission shall sponsor periodic ethics seminars that shall be mandatory for all judges. Judicial ethics shall also be included as part of the content of other in-state courses sponsored by the Judicial Education Commission.
- (c) Exemptions. Retired judges sitting less than half time shall be exempt from these requirements. Retired judges sitting half time or more shall be required to complete five hours of judicial education per year, a requirement that can be met through participation in the in-state programs sponsored by the Judicial Education Commission.
- **Rule 3.3. Credits Computation.** Credit shall be awarded on the basis of one credit hour for each sixty (60) minutes of attendance at a continuing judicial education course or activity. Two (2) credit hours shall be awarded for each hour of teaching in an approved continuing judicial or legal education course or activity, or at a law school that has been accredited by the American Bar Association, up to a maximum of six (6) credit hours per year.
- **Rule 3.4. Sponsorship and Recording.** Participation in in-state courses sponsored or co-sponsored by the Judicial Education Commission shall automatically be recorded and credited toward each judge by means of the attendance roster for said course. Credit for participation in other in-state or out-of-state courses shall require individual documentation. Each judge shall submit a transcript for each course attended or an affidavit attesting to said attendance to the Judicial Education Commission by the end of each reporting year as set by the commission.

- **Rule 3.5. Failure to Comply.** Any judge who fails to document the completion of ten (10) hours of continuing judicial education within ninety (90) days of the end of each reporting year shall be referred to this Court for possible discipline.
- Rule 3.6. In-House Orientation. Each newly-appointed or promoted judge shall participate in an in-house orientation to the bench. A senior judge on his or her court shall be partnered with the new judge and shall serve as a mentor. The orientation/mentor partnership shall include observations and discussions on case flow, substantive law, sentencing, ethics, termination of legal practice, and bench skills. The partnership shall be for a period of one to three weeks, at the discretion of the chief or presiding judge/justice of the court in which the newly-appointed or promoted judge is to sit.
- **Rule 3.7. Expenses.** All in-state and national or regional programs sponsored or approved by the Judicial Education Commission shall be the financial responsibility of the judicial education budget. Any non-sponsored or out-of-state programs shall be reimbursable with the advance approval of the Judicial Education Commission.

## Rule 4. Judicial Performance Evaluation

**Preamble.** The courts, the public, and the bar have a vital interest in a responsive and respected judiciary. This Rule is adopted in recognition of the fact that the periodic evaluation of a judge's performance is a reliable method for promoting judicial excellence and competence.

## Rule 4.1. Judicial Performance Evaluation Committee.

- (a) This court shall appoint a Judicial Performance Evaluation Committee, to develop and administer, under the Court's supervision, a program for the continuing evaluation of judicial performance. The Committee shall establish procedures to implement the program and shall oversee its daily operation. The Committee shall submit an annual report to the Court which shall contain a summary of evaluation results and recommendations for the improvement of the program.
- (b) The Committee shall consist of eleven (11) members, six (6) of whom shall be judges, with representation from each of the courts in the unified judicial system; three (3) of whom shall be active members of the Bar of this State; and two (2) of whom shall be representatives of the general public who are familiar with the judicial system. This Court shall designate one member of the Committee as its chair. Committee members shall be appointed to serve for a term of two years and may be reappointed for such additional term or terms as the Court shall determine.

# **Rule 4.2. Judicial Performance Evaluation Program.**

(a) There shall be established a Judicial Performance Evaluation Program, to be supervised by this Court and implemented and administered by the Judicial Performance Evaluation Committee. The primary goals of this program shall be the self-improvement of individual judges and the improvement of the judiciary as a whole. A secondary goal of the program shall be the improvement of the design and content of continuing judicial education programs. The Judicial Performance Evaluation Program shall be administered so that there shall be no interference with the performance of the regular duties of judges and no infringement on judicial integrity.

- (b) Each judge in the unified judicial system shall be evaluated biennially. Newly appointed judges shall be evaluated at the end of their second year of service.
- (c) The criteria for evaluation shall address all facets of a judge's performance, including, but not limited to, integrity, knowledge and understanding of law and procedure, communication skills, preparation, attentiveness, control over the proceeding, management skills, punctuality, service to the profession and the public, and effectiveness in working with other judges.
- (d) The evaluation process shall employ acceptable, professionally recognized methods of data collection. The data shall be obtained from multiple sources to provide balanced information and shall be based on a judge's current performance. The data collection instruments shall be reviewed by experts in research techniques to ensure that such methods are valid and free from bias.
- (e) Staff support for the program shall be provided by the Administrative Office of the State Courts.

## Rule 4.3. Records.

- (a) Confidentiality. All records and information obtained and maintained by the Committee concerning judicial performance shall be confidential and shall not be disclosed except in accordance with this Rule. The Committee shall ensure the confidentiality of all information, questionnaires, notes, memoranda, electronic and computer data, and any other data obtained in the course of a judicial performance evaluation and shall ensure the confidentiality of the identity of any person who provides information in the course of such an evaluation.
- (b) *Disclosure*. Evaluation information shall be used only to promote the goals of the program. For the purpose of self-improvement, individual data and results shall be provided only to the judge being evaluated and to the chief or presiding judge of his or her court, who shall review the data with the judge being evaluated. Evaluation information in summary form, without reference to the names of individual judges, shall be provided to the Supreme Court, to be used for the purposes of improving the administration of the judiciary, developing judicial education programs, and providing the public with information about judicial performance. Evaluation information shall not be used to discipline an individual judge or be disclosed to the Commission on Judicial Tenure and Discipline, except as required by the Canons of Judicial Ethics (Code of Judicial Conduct).

# REGULATIONS CONCERNING CONFIDENTIALITY OF THE RECORDS OF THE JUDICIAL PERFORMANCE EVALUATION COMMITTEE

#### Preamble

## Rule 4.3(a) establishes broad confidentiality for JPEC materials and reports:

- 1. All records and information obtained and maintained by the Committee are required to be kept confidential.
- 2. All information, questionnaires, notes, memoranda, electronic and computer data, and any other data obtained in the course of a judicial performance evaluation is required to be kept confidential.
- 3. The identity of any person who provides information in the course of such an evaluation shall be kept confidential.

# Rule 4.3(b) provides how the material may be used: i.e., the very limited exceptions to confidentiality:

- 1. Individual data and results shall be provided only to the judge being evaluated and to the chief or presiding judge of his or her court, who shall review the data with the judge being evaluated.
- 2. Evaluation information in summary form, without reference to the names of individual judges, shall be provided to the Supreme Court, to be used for the purposes of improving the administration of the judiciary, developing judicial education programs, and providing the public with information about judicial performance.
- 3. Evaluation information shall not be used to discipline an individual judge or be disclosed to the Commission on Judicial Tenure and Discipline, except as required by the Canons of Judicial Ethics (Code of Judicial Conduct).

## The purpose of these regulations is:

- 1. To confirm the requirement of confidentiality and to clarify its application;
- 2. To provide for consistent treatment of evaluation records;
- 3. To establish the limits of the use of evaluations;
- 4. To establish uniform regulations for the disclosure of the results of performance evaluations.
  - 5. To provide for sanctions for the violation of the confidentiality rules.

Based on the experience with the pre-existing superior court evaluation program and the clear benefits of disclosure of individual data to judges in that court, the release of individual data to judges being evaluated is recognized as important to the evaluation process. Judges who have been evaluated and for whom there are a number of individual evaluations should have the opportunity to review the individual evaluations at the time of the evaluation and thereafter. To that effect, each judge shall be custodian of the individual questionnaires and evaluations upon the conclusion of the evaluation. Each judge's retention of the individual questionnaires and evaluations shall nonetheless be subject to the confidentiality requirements of these regulations.

Confidentiality of the records of the JPEC is critical to the willingness of individuals to participate in the evaluation program and to provide responses to questionnaires and the like. Accordingly, confidentiality is critical to the success of the program. The confidentiality that is at issue here is not a privilege personal to the judge under evaluation. The requirement of confidentiality has positive benefits to the judicial performance evaluation system and to the committee, irrespective of its benefits to the individual judge. Accordingly, the requirement of confidentiality cannot be waived by an individual judge. Thus, under the regulations adopted by the JPEC, no judge is authorized to disclose the results of an evaluation or to disclose any information concerning an evaluation, except as provided by Rule 4.3 and these regulations. This is true whether the evaluation is positive or negative.

Breach of the confidentiality requirement would have a serious effect on the success of the evaluation program. Furthermore, breach of the confidentiality may affect the interests of judges subject to evaluation and of those providing raw data for the purpose of evaluation. Thus, these regulations specify the nature of sanctions that may be imposed upon a person who violates the confidentiality requirement.

# Regulation 1. All Material to Remain the Property of the JPEC and to be Subject to JPEC Control for Purposes of Confidentiality/Destruction

All material of any kind whatsoever gathered or received by the JPEC for the purpose of evaluating a judge or judges, including but not limited to all information, questionnaires, notes, memoranda, electronic and computer data, and any other data obtained in the course of a judicial performance evaluation, shall be the property of the JPEC.

The chair of the JPEC shall be the legal custodian of all such records or materials, except those custody of which has been transferred to an individual judge.

The JPEC shall establish internal procedures for the control of all such material in order to assure its confidentiality.

The JPEC shall establish internal procedures for the destruction of confidential material relating to an individual judge, upon such terms and conditions, and at such times, as the JPEC shall determine. Material, custody of which is transferred to an individual judge, shall be kept or destroyed, at the discretion of the individual judge.

Regulation 2. Disclosure of Individual Questionnaires and Evaluations and Statistical Summaries to the Chief or Presiding Judge and to the Judge Under Evaluation for Purpose of Conducting Evaluation; Disclosure of Summary Information to Supreme Court

The JPEC shall collect and retain in its care, custody, and control all information, question-

naires, notes, memoranda, electronic and computer data, and any other data obtained in the course of a judicial performance evaluation.

The JPEC shall segregate all such data by individual judge, in order to permit biannual evaluation of each judge.

The JPEC shall provide a single copy of all such data relating to an individual judge, including any statistical summaries the JPEC may have developed, to the chief or presiding judge of the court of which the judge being evaluated is a member. No additional or other copies of any of the individual data shall be made by either the chief or presiding judge or the judge under evaluation.

Upon receipt of the individual data and information and any statistical summary from the JPEC, a chief or presiding judge may review the material with the judge under evaluation and the judge under evaluation shall have the opportunity to review the material. The chief or presiding judge may enlist, if necessary, the assistance of a retired judge from that court to review the performance information with the judge being evaluated. Upon the conclusion of the evaluation, custody of the original data upon which the evaluation is based shall be transferred to the judge under evaluation.

The JPEC shall provide evaluation information in summary form, without reference to the names of individual judges, to the Chief Justice of the Supreme Court.

# Regulation 3. Nondisclosure of Individual Data and Summary Data; Exception for Commission on Judicial Tenure and Discipline

- (a) Individual Data Completely Confidential and Not to Be Disclosed. Individual data shall be absolutely confidential and privileged except as provided above. No member of the JPEC or person associated with the JPEC, no chief or presiding judge, and no judge who has been subject to evaluation, shall disclose the nature or contents of any individual questionnaire, notes, or memoranda, which formed a part of the evaluation or the material upon which the evaluation was based, in any context whatsoever.
- **(b)** Summary Data Regarding Individual Judge Completely Confidential and Not to Be Disclosed. If a statistical summary of the data regarding an individual judge is prepared and is provided to the chief or presiding judge and to the judge under evaluation, such summary shall be absolutely confidential and privileged, except as provided above. No member of the JPEC or person associated with the JPEC, no chief or presiding judge, and no judge who has been subject to evaluation, shall disclose the nature or contents of any individual questionnaire, notes, or memoranda, which formed a part of the evaluation, in any context whatsoever.
- (c) Exception for Commission on Judicial Tenure and Discipline. If, upon review of evaluation material submitted by the JPEC, a chief or presiding judge determines that the evaluation material or some portion thereof requires the chief or presiding judge to file a complaint to the Commission on Judicial Tenure and Discipline, the chief or presiding judge may make such complaint as the chief or presiding judge determines is required under the provisions of Canon 3(D)(1) of the Code of Judicial Conduct. In filing the complaint, the chief or presiding judge may disclose to the Commission on Judicial Tenure and Discipline such material from the evaluation information as the chief or presiding judge determines, in the exercise of discretion, is necessary

to an appropriate complaint. An individual judge who has been the subject of a complaint filed by a chief or presiding judge, which complaint is based on or includes evaluation material or some portion thereof, may provide such additional evaluation material to the Commission on Judicial Tenure and Discipline as the individual judge determines is appropriate or necessary to defend against the allegations of the complaint. Upon the filing of the complaint and the response of an individual judge with the Commission on Judicial Tenure and Discipline, confidentiality as to the material disclosed to the Commission on Judicial Tenure and Discipline shall be determined by the rules of that commission.

# **Regulation 4. Disclosure of the Results of Performance Evaluation**

No judge who has been evaluated, nor any chief, presiding, or retired judge who has participated in the performance evaluation of another judge, shall disclose the results of the individual evaluation to any other person, body, or agency, except the Commission on Judicial Tenure and Discipline, as provided above. No judge who has been the subject of an evaluation may waive the confidentiality requirement of the evaluation results.

# Regulation 5. Sanctions for Violation of the Confidentiality Rules

Any judge who breaches the confidentiality and privilege requirements of these regulations may be guilty of violating the requirement of Canon 2 of the Code of Judicial Conduct that "[a] judge shall comply with the law \* \* \*."

Any person other than a judge who breaches the confidentiality and privilege requirements of these regulations may be subject to appropriate sanction and may be guilty of contempt of court.